

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-06-380(6)
	§	C.A. No. C-09-37
CATARINO GUTIERREZ, JR.,	§	
Defendant/Movant.	§	

ORDER DENYING CERTIFICATE OF APPEALABILITY

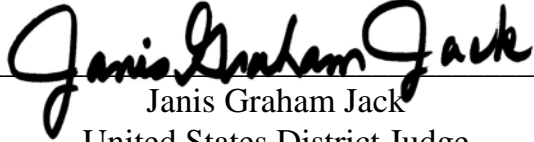
By written order and final judgment entered July 1, 2009, the Court denied Catarino Gutierrez, Jr.'s ("Gutierrez") motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. (D.E. 357, 358.) In the same order, the Court also *sua sponte* denied Gutierrez a Certificate of Appealability. (D.E. 357 at 13-14.)

Gutierrez has timely appealed, and his appeal remains pending before the Fifth Circuit. (D.E. 359.) On December 4, 2009, the Clerk of this Court received from Gutierrez a petition for a Certificate of Appealability with supporting memorandum. (D.E. 373.) Although the document was mailed to this Court, it appears to be a request directed to the Fifth Circuit. (See D.E. 373 at 1, Memo at 1 (both setting forth the style of the case and listing it as being before the United States Court of Appeals for the Fifth Circuit).) The Certificate of Service also indicates that it was mailed directly to the Fifth Circuit, although that court's docket sheet does not yet reflect that it has been received.

To the extent Gutierrez's motion can be interpreted as a request for a COA from this Court, it is DENIED for the reasons set forth in the Court's prior order. (See D.E. 357 at 13-14.) If he has filed his motion directly with the Fifth Circuit, then the appellate court will rule on his request. If

he does not expressly make such a request for a COA from the appellate court, the notice of appeal shall be deemed to constitute a request addressed to the judges of the Fifth Circuit. Fed. R. App. P. 22(b).

It is so ORDERED this 4th day of December, 2009.



Janis Graham Jack
United States District Judge